BANKRUPTCY—PREFERENCES—FRANCHISE TAX.—The state of New Jersey filed its claim against a bankrupt corporation for the "annual license fee or franchise tax" on its outstanding capital stock, imposed by the law of that state on corporations organized by it. The corporation had its principal office in New Jersey, but all of its property was located in Illinois and all of its business was carried on in that state. *Held,* that the fee or franchise tax is a "tax" within § 64a of the bankruptcy act and must be paid in advance of dividends to creditors. *State of New Jersey* v. *William F. Anderson* (1906), 27 Sup. Ct. Rep. 137.

It was contended that this annual license fee was not a tax entitled to be paid in advance of creditors' claims within the meaning of § 64a of the bankruptcy act, which reads as follows: "The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, state, county, district, or municipality, in advance of the payment of dividends to creditors, etc." The court here took the view that this fee was levied under a state law authorizing the imposition of taxes, and it made no difference whether it was called a license fee or a tax, it was none the less a tax because given a different name. The state under which the corporation was created had the power to fix the terms of its existence, and to provide that it should pay an annual amount to the state, to be determined by the amount of its yearly outstanding capital stock. If considering this as a tax entitled to priority in payment within the meaning of the act, works a hardship on the creditors of the state where the property is located, the remedy is to be sought through the legislature and not through the courts. It was also urged that the present act does not require the payment of taxes to a state wherein the bankrupt has no property but contemplates payment only to the state where the property is located. In the act of 1867, priority was given to all debts due the state in which the proceedings in bankruptcy were pending, but the present act obliges the trustee to pay all taxes legally due, without distinction between the United States, state, county, district or municipality. CHIEF JUSTICE FULLER, JUSTICE HARLAN and JUSTICE PECKHAM dissented, on the ground that the statute embraced only strictly property taxes and not an annual fee of this kind. Construing it otherwise they said might work injustice to creditors of the corporation, where its business was carried on, by allowing the state where it was organized but had no property, to exact a large fee which must be paid before the debts of creditors.

BANKRUPTCY—TRANSFERS REQUIRED TO BE RECORDED—PREFERENCES.—Mrs. Chadwick, while insolvent, gave a mortgage on her entire personal estate, to a bank, on April 27, 1904. The mortgage was not recorded until November 22 of the same year nor was the mortgagee given possession of the property. Proceedings in bankruptcy were begun on December 1, and Mrs. C. was adjudged a bankrupt. It will be seen that the mortgage was given more than four months before the petition in bankruptcy was filed but was recorded within the four months. By the laws of Ohio a mortgage unrecorded is good as between the parties and against everyone except creditors of the mortgagor, subsequent purchasers, and mortgagees in good faith. *Held,* that this

was a transfer required to be recorded by the bankruptcy act, and as this had been done within the four months the trustee might avoid the transfer as a preference. *Loeser* v. *Savings Deposit Bank & Trust Co.* (1906), — Ohio —, 148 Fed. Rep. 975.

The principal question in the case was whether or not this was a transfer "required" to be recorded within the meaning of § 60a of the bankruptcy act as amended Feb. 5, 1903. This section, so far as applicable here reads, "A person shall be deemed to have given a preference if being insolvent, he has within four months before the filing of the petition * * * made a transfer of any of his property, etc. When the preference consists in a transfer such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is *required.*" The courts are not agreed as to the scope of the word "required" in the amendment. Prior to 1903 a transfer, made more than four months before the petition was filed, was valid even though not recorded. This had a tendency to promote secret transfer and so the amendment was added. As originally drafted the amendment read, where recording is "required" or "permitted," but the latter word was dropped by the Senate after the bill had passed the House. Considering this fact the court, in *In re Hunt,* — N. Y. —, 139 Fed. 283, held, that a transfer which was good as between the parties without being recorded was not one that was "required" to be recorded within the meaning of the amendment, and therefore that a transfer made more than four months previous to filing the petition but recorded within the four months was valid. The same view was taken in *Meyers Bros. Drug Co.* v. *Pipkin Drug Co.,* 136 Fed. 396, by the Texas court. In the present case the court said that dropping the word "permitted" from the amendment as proposed had no effect, since the words "permitted" and "required" were of synonymous legal meaning. It was therefore held that a transfer which was "permitted" to be recorded in order to give it validity as against certain classes of persons though valid without recording as to other classes was an instrument "required" to be recorded within the meaning of the word as there used. This was also the opinion expressed in *English* v. *Rose,* — Pa. —, 140 Fed. 630; *First Nat. Bank* v. *Connett,* — Mo. —, 142 Fed. 33; *In re Montague,* — Va. —, 143 Fed. 428; *Morgan* v. *First Nat. Bank,* — W. Va. —, 145 Fed. 466. Technically, perhaps, the view taken by the New York and Texas courts is correct, but the other view seems to be the more logical one, for under the former view the amendment would have no meaning, and the evil which the amendment was intended to remedy would be untouched.

BILLS AND NOTES—BONA FIDE PURCHASER—NOTICE OF WANT OF POWER IN TRANSFERRER.—In 1901, one Umsted borrowed $125,000.00 from the defendant in order to purchase the whole capital stock of the Hartman Manufacturing Co., depositing all of the stock of the said company with the defendant as security for the loan. Later Umsted borrowed $200,000.00 from the Hanover National Bank on the representation that he had borrowed $125,000 from the defendant for the Hartman Mfg. Co. on a promissory note secured by a